

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

PIERRE A. ROBINSON

FAA Order No. 97-18

Served: May 23, 1997

Docket No. CP96EA0268

ORDER REMANDING MATTER TO OFFICE OF HEARINGS

On January 2, 1997, Chief Administrative Law Judge John J. Mathias issued an order dismissing Pierre Robinson's request for hearing and assessing a \$750.00 civil penalty against him based upon the law judge's finding that Mr. Robinson had failed to file both an Answer and a response to the Order to Show Cause. Mr. Robinson filed an appeal, seeking to have the law judge's order vacated and the case reinstated. The case is remanded to the Office of the Law Judges to give Mr. Robinson an opportunity to demonstrate that he had good cause for failing to file an Answer by its due date under 14 C.F.R. § 13.209.

On October 8, 1996, Complainant filed the Complaint, alleging that Mr. Robinson had violated 14 C.F.R. § 107.21(a)(1), and asserting that a \$750 civil penalty would be appropriate.¹ It was written in boldface in the complaint that

¹ Complainant alleged that on March 30, 1996, Mr. Robinson had an unloaded .38 caliber Interarms automatic firearm in his accessible baggage when he underwent security inspection before entering the sterile area at Philadelphia International Airport.

Mr. Robinson had 30 days from the date shown on the certificate of service in which to file an Answer.²

Section 13.209 of the Rules of Practice in Civil Penalty Proceedings, provides that "a respondent shall file a written answer to the complaint ... not later than 30 days after service of the complaint." 14 C.F.R. § 13.209(a). Hence, Mr. Robinson's Answer was due to be filed no later than November 12, 1996.³

The law judge issued an order summarizing the requirement under 14 C.F.R. § 13.209(a) for the respondent to file a written Answer to the Complaint within 30 days of service of the Complaint.⁴ The law judge also instructed the parties to serve copies of all filings upon him.

After the due date for filing the Answer had passed, the law judge issued an Order to Show Cause and Setting Tentative Procedural Schedule. In this order, the law judge wrote, as follows:

If Respondent still wishes to have a hearing in this matter, he must file an answer to the complaint on or before December 20, 1996....

² It was noted in the Complaint that "[t]he Rules of Practice for this proceeding are set forth in Part 13, Subpart G, of the Federal Aviation Regulations (14 C.F.R. Part 13).

³ Because the Complaint was sent by mail, Mr. Robinson also had the benefit of the "mailing rule," which would have given him an additional 5 days in which to file his Answer. See 14 C.F.R. § 13.211(e).

⁴ The law judge noted further as follows:

With regard to the need to file [an] answer, it should be noted that any letters or written communications previously provided to FAA personnel, in connection with the Notice of Proposed Civil Penalty, are not a part of the files of this proceeding. This is an entirely new proceeding, being conducted before an administrative law judge of the U.S. Department of Transportation. If Respondent wishes to rely upon some prior correspondence or communication as the answer to the Complaint, he must re-file it in the record of this case.

Absent the filing of such an answer by December 20, 1996, Respondent is hereby ordered to show cause, by that date, as to why his request for hearing should not be dismissed and the sanction set forth in the complaint (\$750) imposed.

Mr. Robinson, by counsel, filed his Answer with the FAA Hearing Docket and served a copy on Complainant on December 9, 1996. The FAA Hearing Docket received the Answer on December 19, 1996. Mr. Robinson's counsel did not serve a copy of the Answer directly on the law judge. Later, when the law judge's office contacted the FAA Hearing Docket to inquire whether the Answer had been filed, the docket clerk mistakenly informed the law judge's secretary that no Answer had been filed. Based upon this erroneous information, the law judge issued an Order Dismissing Request for Hearing and Assessing Civil Penalty.⁵

Mr. Robinson's counsel next wrote to the law judge noting that an Answer had indeed been filed in accordance with the law judge's Order to Show Cause. Counsel then requested that the law judge reconsider the dismissal of the request for hearing and assessment of the penalty and allow the case to proceed to hearing.⁶

Soon afterwards, the law judge issued an order forwarding to the Administrator Mr. Robinson's request that the case be reinstated. The law judge explained that he no longer had jurisdiction over this matter, and acknowledged that he had dismissed the request for hearing based upon erroneous information. He recommended that the Administrator vacate the order dismissing the request for

⁵ A copy of the Order Dismissing Request for Hearing and Assessing Civil Penalty, dated January 2, 1997, is attached.

⁶ Letters by Robert A. Porter, Esq., to Administrative Law Judge John J. Mathias, dated January 7 and 8, 1997.

hearing and remand the matter to the Office of Hearings for continuation of the proceedings.⁷

Mr. Robinson, by counsel, filed a notice of appeal with the Administrator from the law judge's order dismissing the request for hearing and assessing a civil penalty. Without waiting for Mr. Robinson to perfect his appeal by filing an appeal brief, Complainant filed a document objecting to the law judge's recommendation that the order dismissing the request for hearing and assessing a civil penalty be vacated and the matter remanded to the Office of Hearings.⁸

Subsequently, Mr. Robinson's attorney filed a document supporting the application to have the matter reinstated. Counsel explained that his failure to serve the Answer on the law judge individually was an oversight. He attached a copy of the Answer bearing an Office of the Chief Counsel Hearing Docket date stamp indicating that the Hearing Docket received the Answer on December 19, 1996.

⁷ A copy of the Order Forwarding to the Administrator Respondent's Request to Vacate Order Dismissing Request for Hearing, served on January 8, 1997, is attached.

⁸ Complainant argued that Mr. Robinson had failed to establish good cause for failing to serve a copy of his Answer directly upon the judge as per the law judge's instructions. Agency counsel's argument is off the mark. Mr. Robinson, by counsel, correctly filed the Answer with the Hearing Docket Clerk, in accordance with the Rules of Practice, 14 C.F.R. § 13.209(b). See also 14 C.F.R. § 13.210. The Rules of Practice provide that documents must be filed with the FAA Hearing Docket and served upon the other party. 14 C.F.R. §§ 13.210 and 13.211. The Rules do *not* provide for separate service of documents that are filed with the FAA Hearing Docket upon the law judge at the Department of Transportation Office of Hearings. While the law judge *may* instruct the parties to serve an Answer upon him for his convenience, failure of a party to serve the law judge separately does not warrant dismissal of the request for hearing (as long as the Answer has been filed in a timely fashion with the FAA Hearing Docket.)

The law judges should also be careful when directing that copies of documents be served directly upon them to make clear that all documents must be filed nonetheless with the FAA Hearing Docket in accordance with 14 C.F.R. § 13.210.

It is true that the law judge dismissed the request for hearing based upon mistaken information. The problem, however, is that even though Mr. Robinson *did* file the Answer before December 20, 1997, in compliance with the law judge's order, Mr. Robinson has not demonstrated good cause for failing to file the Answer by November 12, 1997, when it was due under Section 13.209 of the Rules of Practice, 14 C.F.R. § 13.209. As was held in a similar case:

The Rules of Practice do not grant law judges the authority to extend the deadline for filing an answer without a showing of good cause. Section 13.209(a) sets a 30-day deadline for filing the answer to the complaint, and Section 13.209(f) states that without good cause, a person's failure to file an answer shall be deemed an admission of the truth of each allegation contained in the complaint.

In the Matter of Atlantic World Airways, FAA Order 95-28, 1995 LEXIS 318 at *5 (December 19, 1995). Hence, Mr. Robinson must show good cause for failing to file his Answer within 30 days of the filing of the Complaint (by November 12, 1996).

In his Order to Show Cause, the law judge did not order Mr. Robinson to show cause for his failure to file an Answer prior to November 12, 1996. Instead, the law judge ordered that if Mr. Robinson did not file an Answer by December 20, 1996, then he should show cause as to why his request for hearing should not be dismissed and a \$750 civil penalty imposed. Consequently, it is understandable why Mr. Robinson did not attempt to show good cause for his failure to file the Answer by its original due date of November 12, 1996.

Accordingly, this matter is remanded to the Office of Hearings for such proceedings as necessary to determine whether Mr. Robinson had good cause for failing to file the Answer by November 12, 1996. If it is determined that good cause existed for Mr. Robinson's failure to file the Answer by November 12, 1996, then the

law judge shall conduct proceedings as appropriate regarding the merits of the case.



BARRY L. VALENTINE
Acting Administrator
Federal Aviation Administration

Issued this 22nd day of May, 1997.